

27 July 2006

Civilian Personnel

Reduction in Force—Local National Employees in Germany

For the Commander:

JAMES C. BOOZER, SR.
Colonel, GS
Deputy Chief of Staff

Official:



DARRELL L. BRIGHT
Regional Chief Information
Officer - Europe

Summary. This regulation prescribes policy and procedures for planning and implementing organizational measures that result in a reduction in force (RIF) affecting local national (LN) personnel.

Applicability. This regulation applies to LN personnel—

- Paid from appropriated or nonappropriated funds.
- In civilian support organizations in Germany.
- Employed by the U.S. Forces in Germany under the provisions of the Collective Tariff Agreement of 16 December 1966 for the Employees of the Sending States Forces in the Federal Republic of Germany (CTA II), except for personnel employed by USAFE and its tenant activities. For the purpose of this regulation, the U.S. Forces include all activities serviced by the United States Army Civilian Human Resources Agency, Europe Region, and the Army and Air Force Exchange Service, Europe.

Supplementation. Organizations will not supplement this regulation without USAREUR G1 (AEAGA-CL) approval.

Forms. AE and higher level forms are available through the Army in Europe Publishing System (AEPUBS).

Records Management. Records created as a result of processes prescribed by this regulation must be identified, maintained, and disposed of according to AR 25-400-2. Record titles and descriptions are available on the Army Records Information Management System website at <https://www.arims.army.mil>.

Suggested Improvements. The proponent of this regulation is the USAREUR G1 (AEAGA-CL, DSN 375-2522). Users may suggest improvements to this regulation by sending DA Form 2028 to the USAREUR G1 (AEAGA-CL), Unit 29351, APO AE 09014-9351.

Distribution. C (AEPUBS).

CONTENTS

Section I INTRODUCTION

1. Purpose
2. References
3. Explanation of Abbreviations and Terms
4. Responsibilities
5. General
6. Applicability
7. Applicability of German Labor Law

Section II PLANNING

8. General
9. Alternative Actions

Section III COMMUNICATION

10. General
11. Advance Notification
12. Terminations Subject to Notification Pursuant to Section 17 of the Law on Protection From Termination of Employment

Section IV COMPETITION

13. General
14. Special Retention Rights
15. Retention-Credit Factors
16. Definition of Competitive Area and Qualification Level
17. Retention Standing
18. Retention Order in the Displacement Process
19. Exemption of Employees From Social Selection Because of Their Knowledge, Skills, and Performance
20. Deviating Social Selection to Keep a Balanced Personnel Structure within the Agency
21. Displacement
22. Retention Registers

Section V

PLACEMENT AND TERMINATION NOTICES

- 23. General
- 24. Order of Referral
- 25. Filling Local National Vacancies
- 26. Notice to Employees
- 27. Notice Periods
- 28. Notice Letters
- 29. Effective Dates of Reassignments and Transfers

Section VI

PARTICIPATION OF THE WORKS COUNCIL AND SHE REPRESENTATIVES GROUP

- 30. Participation in the Organizational Measure
- 31. Participation in Individual Personnel Actions

Section VII

PAY PROTECTION AND FINANCIAL ASSISTANCE

- 32. General

Section VIII

RECORDS MANAGEMENT OF RIF ACTIONS AND TRANSFERS OF FUNCTIONS

- 33. General

Appendixes

- A. References
- B. Justification of Compelling Operational Requirements for Organizational Changes
- C. Sample Letter for Requesting Works-Council Cooperation and Concurrence With Local National Reduction-in-Force Termination Actions
- D. Shop Agreement on Social Selection-Retention-Credit Factors and Retention-Credit Points
- E. Questionnaire for Social Data to Determine Social-Retention Standing During a Reduction in Force and to Determine Prospects for Continued Employment
- F. Definition of Creditable Service for Determining Retention-Credit Points, Notice Periods, and Eligibility for Benefits Under the Social Security Agreement
- G. Sample Reconciliation of Interests for a Notice of Termination for Change of Employment Conditions

Table

- 1. Significant Impact Criteria

Glossary

SECTION I INTRODUCTION

1. PURPOSE

This regulation establishes policy and procedures for planning and implementing organizational changes affecting local national (LN) employees in Germany.

2. REFERENCES

Appendix A lists references.

3. EXPLANATION OF ABBREVIATIONS AND TERMS

The glossary defines abbreviations and terms.

4. RESPONSIBILITIES

a. Commanders and agency chiefs who are delegated authority for civilian personnel administration are responsible for planning and implementing organizational changes according to the policy and procedures in this regulation. When planning and implementing these changes, they must work closely with their servicing civilian personnel advisory center (CPAC) or Army and Air Force Exchange Service, Europe (AAFES-Eur), human resources office (HRO). In particular, they are responsible for—

(1) Informing the Civilian Personnel Operations Center (CPOC) immediately of vacancies for LN personnel (appropriated fund (AF) and nonappropriated fund (NAF)) funded and documented on a table of distribution and allowances (TDA) or any other manpower document. As soon as one or more LN employees of a U.S. Forces organization in Germany are affected by a reduction in force (RIF), commanders and agency chiefs are no longer authorized to delay filling an approved vacancy for LN personnel, not even temporarily.

(2) Determining which positions are to be eliminated. In case of agency reductions (permanent downsizing of the workforce), sound written justification for the elimination of each position caused by the organizational change must be provided. The justification must be detailed and plausible enough to withstand a review in labor court if necessary. Appendix B provides more guidance.

(3) Informing the works council and severely handicapped employee (SHE) representatives group, as well as carrying out all required participation procedures and hearings in compliance with the modified German Personnel Representation Law (GPRL) and the modified Social Security Code IX, Part 2 (Severely Handicapped Law) as explained in section VI.

(4) Informing the local workforce.

(5) Guaranteeing the completeness and accuracy of requests for personnel action (RPAs), including the documentation of qualification profiles (required qualifications or special knowledge and skills).

(6) Accepting surplus employees who are affected by a RIF and who have placement rights under German law in accordance with the determination made by the United States Army Civilian Human Resources Agency, Europe Region (CHRA-E), RIF Team according to c(5) below.

b. CHRA-E and AAFES-Eur HROs are responsible for—

(1) Orienting, advising, and assisting commanders, agency chiefs, and supervisors in all phases of organizational changes and RIF actions for organizational requirements.

(2) Advising and actively supporting agency chiefs in all works council participation procedures and hearings of SHE representatives groups.

(3) Informing local and regional labor agencies in accordance with section 17 of the Law on Protection From Termination of Employment (*Kündigungsschutzgesetz (KSchG)*) when commercial organizations (AAFES-Eur, Edelweiss Lodge and Resort, European Stars and Stripes) are concerned.

(4) Informing the USAREUR G1 (AEAGA-CL), Unit 29351, APO AE 09014-9351, of planned organizational changes before works council participation procedures are initiated at a subordinate local or intermediate level. For AAFES-Eur organizations, this notification must be sent to the Commander, AAFES-Eur.

(5) Advising commanders, agency chiefs, and supervisors on RPAs and helping them develop requests.

(6) Preparing notices of termination; obtaining the signature of the commander or agency chief on these notices; helping issue notices of termination, notices of termination for change of employment conditions, reassignment notifications, and annulment contracts; and coordinating necessary measures of works council participation and hearings of SHE representatives groups. Appendix C provides a sample request for works council participation.

(7) Requesting approval from the integration office to terminate SHEs or employees with assimilated status, submitting a copy of the request to the works council and to the SHE representatives group, and issuing the notice of termination within 1 month after receiving approval.

(8) Completing notifications of mass terminations according to paragraph 12.

c. The CHRA-E RIF Team and AAFES-Eur HROs are responsible for—

(1) Collecting data from employees and the Control and Services Directorate, Foreign Forces Payroll Office (FFPO), to be used for the social-selection process.

(2) Preparing retention registers.

(3) Locating and coordinating placement opportunities for continued employment with the U.S. Forces (including USAFE) or with non-U.S. Forces organizations, and coordinating actions with labor agencies.

(4) Administering the Local National Referral System (LNRS) (CHRA-E RIF Team only).

(5) Determining—

(a) The availability of suitable surplus employees for available vacancies.

(b) The qualifications of surplus employees, their retention standing based on their social-retention rights, and their suitability for reported vacancies.

(6) Making final determinations on the retention of surplus employees who are legally entitled to continued employment in available vacancies.

(7) Preparing final offers for continued employment in consideration of applicable legal and tariff conditions.

(8) Giving offers for continued employment to employees; notifying commanders, agency chiefs, and supervisors accordingly; and receiving responses to offers for continued employment from employees.

(9) Continuously exchanging information with one another on all vacancies, including USAFE positions.

5. GENERAL

When organizational changes result in the elimination of LN positions or otherwise negatively affect LN positions, Army in Europe policy is to avoid (if possible) or minimize the negative effect on permanent LN employees.

6. APPLICABILITY

The policy and procedures established in this regulation will be applied in the following circumstances:

a. Agency relocations.

b. Conversion of in-house operations to contract operations.

c. Deactivation of an agency or essential parts of an agency. A deactivation is the abolishment of an entire agency or an essential part of an agency with a discontinuation of its functions or a transfer of functions to another agency.

d. Merging of one agency with one or more other agencies.

e. Reduction of an agency. A reduction is a permanent decrease of an agency's workforce because of a curtailment of the agency's mission or a reduction of one or more of its functions.

7. APPLICABILITY OF GERMAN LABOR LAW

German labor laws and specifically the Law on Protection From Termination of Employment (*KSchG*) are the legal bases for the policy in this regulation.

SECTION II PLANNING

8. GENERAL

When planning organizational measures that will affect LN employees, commanders and agency chiefs will include the servicing CPAC or (for AAFES-Eur) the AAFES-Eur HRO, the public affairs officer, the works council, and the SHE representatives group in the earliest planning stages. A local plan should be developed outlining the sequence of events and timeline of planned measures to ensure all actions are completed within targeted timeframes.

9. ALTERNATIVE ACTIONS

When a RIF is anticipated, commanders and agency chiefs will take action to lessen the likelihood of adverse effects on the LN workforce. Actions that may be taken include identifying—

a. Continuing positions within the commuting area that are identical to the positions to be eliminated in the organization undergoing the RIF and are temporarily occupied by employees whose appointment will expire on or shortly after the target date of the organizational change.

b. Positions within the commuting area of the affected organization that will be vacated through attrition (for example, by employees reaching retirement age or resigning, through annulment contracts). Employment contracts of employees who are eligible for regular retirement pay (65 years of age) will not be extended.

c. LN positions occupied by family members that will be vacated on or shortly after the target date of the organizational change through normal permanent-change-of-station rotations (not applicable to AAFES-Eur).

SECTION III COMMUNICATION

10. GENERAL

Because of political and labor-relation implications of reductions in the LN workforce and the possible effect on other U.S. commands and agencies, it is important that reductions be comprehensively planned and coordinated. Timely, honest, straightforward communication with the works council, SHE representatives group, and the workforce is key to reducing turbulence, maintaining confidence in management actions, and preventing unfounded rumors.

11. ADVANCE NOTIFICATION

a. The following notification requirements apply:

(1) Commanders and agency chiefs of U.S. Forces organizations in Germany serviced by the CHRA-E will inform the USAREUR G1 (AEAGA-CL), Unit 29351, APO AE 09014-9351, at the earliest date of any planned organizational changes that will have a significant effect on LN employment. Within AAFES-Eur, the Commander, AAFES-Eur, will be informed. A request for approval of the planned organizational change must be included. As a minimum, the report will include the following comments and explanations:

- (a) Reason for the organizational change.
- (b) Anticipated number of LN employees who will be affected by the change.
- (c) Proposed effective date.
- (d) Efforts to minimize the RIF, including alternative considerations.
- (e) Prospects for reassignment.
- (f) Consequences if a RIF is not implemented.

(2) Heads of HQ USAREUR/7A staff offices will coordinate plans for organizational changes that will have a significant effect on LN employees with the USAREUR G1 (AEAGA-CL) before making a final decision or issuing instructions for implementation. The AAFES-Eur Region Human Resources Directorate will coordinate plans for organizational changes that will have a significant effect on LN employees with the Commander, AAFES-Eur. Organizational changes that meet the criteria in table 1 are considered significant.

(3) If a pending organizational change does not meet the criteria in table 1 but is expected to require that notices of termination be issued to five or more LN employees, the commander of the activity will inform the USAREUR G1 (AEAGA-CL) or (as appropriate) the Commander, AAFES-Eur, of the action. Notification must be given at the earliest possible date, but not later than 5 workdays before any local announcement is made or information is released about the change. The notification should include the reason for the action, the number of LN employees affected, and the proposed effective dates of terminations. In urgent cases, this information may be sent by fax (USAREUR G1: DSN 375-2511 or civ 0621-487-2511, AAFES-Eur: civ 06134-715319).

Table 1 Significant Impact Criteria	
LN Employees in a Competitive Area	Number or Percentage of Surplus LN Employees in the Same Competitive Area
More than 20 but fewer than 60	More than 5
60 or more but fewer than 500	10 percent or more than 25, whichever is greater
500 or more but fewer than 1,000	30 or more
1,000 or more	At least 5 percent

b. The notification requirements in a(1) above do not apply to organizational measures ordered by either of the following:

(1) The CG, USAREUR/7A, if the Head Works Council, USAREUR, was involved in or informed of the measure through the cooperation procedure pursuant to the provisions of section 78, GPRL (modified).

(2) A U.S. authority above HQ USAREUR/7A level if the Head Works Council, USAREUR, was informed of the measure in accordance with number 1, sentence 4, of the Protocol of Signature re Article 56, section 9, of the Supplementary Agreement to the NATO Status of Forces Agreement (SA NATO SOFA).

12. TERMINATIONS SUBJECT TO NOTIFICATION PURSUANT TO SECTION 17 OF THE LAW ON PROTECTION FROM TERMINATION OF EMPLOYMENT

AAFES-Eur, the Edelweiss Lodge and Resort, and the European Stars and Stripes are managed by public administrations that have commercial objectives. For this reason, according to section 17(1) of the Law on Protection From Termination of Employment (*KSchG*), these agencies are obligated to notify the responsible labor agency of mass terminations and hear employee representatives (the local works council and the responsible SHE representatives group if SHEs or employees of assimilated status are affected). According to section 18 of this law, terminations that are subject to notification according to section 17 of the law will become legally valid only if approved by the labor agency. According to a decision by the European Court of Justice of 27 January 2005, a notification of mass termination is considered valid only if both of the following have occurred:

a. The internal consultation of the works council and the SHE representatives group in accordance with section 17(2) of the Law on Protection From Termination of Employment (*KSchG*) has been completed.

b. The notification in accordance with sections 17 and 18 of the law is submitted before notices of termination are issued.

SECTION IV COMPETITION

13. GENERAL

This section identifies employees who have special retention rights and establishes retention-credit factors that determine the retention standing of competing employees under RIF rules established in this regulation.

14. SPECIAL RETENTION RIGHTS

Employees identified in subparagraphs a through h below will be granted special retention rights according to the principles explained in each subparagraph:

a. Works council members, SHE representatives, and youth and apprentice representatives may be terminated by ordinary notice only when an agency is deactivated. An agency includes all agency parts and assigned employing organizations that are represented by one works council, which is the same as a competitive area (para 16a).

(1) If only the part of the agency where the works council member, youth and apprentice representative, or SHE representative works is deactivated, it must be determined whether or not each of these employees can be placed in another part of the agency in accordance with section 15(4) of the Law on Protection From Termination of Employment (*KSchG*). In exceptional cases when placement in another position is not possible, the USAREUR G1 (AEAGA-CL) or AAFES-Eur Region Human Resources Directorate, as applicable, must be notified in writing immediately to obtain more guidance.

(2) Terminations caused by the deactivation of an entire agency will be effective on the date that the last of the employees in (1) above is released, regardless of possible shorter individual notice periods of these employees.

(3) If an agency is not deactivated in its entirety, the protective provisions in (1) and (2) above will apply for another 12 months after the date that the employee's representation duties end or are terminated by a court decision.

b. Members of the works council election committee and works council election candidates are entitled to the same protection indicated in subparagraph a above. The protection for members of the works council election committee begins on the day of their appointment and lasts until 6 months after the date the election results are announced. The protection for works council election candidates begins on the date the employee is proposed as a candidate and lasts until 6 months after the date the election results are announced.

c. The protective provisions in subparagraphs a and b above also apply to alternate works council members, provided they have actually performed council work by substituting for a regular works council member. The protection begins on the day the alternate member substitutes for a regular member for the first time and ends 1 year after the last substitution.

d. SHEs, employees with assimilated status, and employees who are pregnant or have recently given birth and who have completed at least 6 months of service are protected as follows:

(1) SHEs may not be issued ordinary notices of termination without prior approval from the servicing integration office. Therefore, immediately after it is determined that SHEs will be affected, a request for approval must be sent to the respective integration office. If the notice of termination or notice of termination for change of employment conditions is not issued within 1 month after the approval is granted, another request for approval must be initiated.

(2) Female employees will not be issued ordinary notices of termination while pregnant or within the first 4 months after childbirth without the approval of the German trade control office (*Gewerbeaufsichtsamt*) or of the highest occupational health and safety authority of the respective German State (*Land*) or its designated office. The same protection applies to employees on parental leave.

e. Employees who have received a draft order for the German Armed Forces (*Bundeswehr*) or who are absent because of basic military training (*Grundwehrdienst*), military exercises (*Wehrübung*), aptitude exercises (*Eignungsübung*), voluntary military service (*Soldat auf Zeit*), or substitute service (*Ersatzdienst*) will not be issued notices of termination or notices of termination for change of employment conditions. On return from military service or aptitude exercises, these employees will be placed in another position within the commuting area. If this placement is not possible, a notice of termination may be issued with a written explanation that the military service or aptitude exercise was not the basis for the action.

(1) These protective provisions apply for up to 2 years, including the period of military service. They also apply to employees who are European Union nationals while they are absent to serve compulsory military duty in their home country.

(2) For Turkish nationals, the protective provisions apply for 2 months, including reasonable periods for travel to and from Turkey.

f. Apprentices engaged in acknowledged official apprenticeship programs will not be separated. Apprentices will—

(1) Be placed in vacancies within the commuting area where the apprenticeship can be completed.

(2) Not be issued notices of termination as long as the apprenticeship can be continued within the commuting area.

g. Employees in public offices are protected by legal provisions. This protection and the legal provisions may vary considerably between German States (*Länder*). For clarification on the extent of individual protection—

(1) CPACs will contact the Office of the Judge Advocate, HQ USAREUR/7A (DSN 370-8127).

(2) AAFES-Eur HROs will contact the AAFES-Eur General Council, Mainz-Kastel.

h. Employees who are on parental leave and who have not accepted part-time employment will be exempt from the RIF for the duration of their parental leave. Employees who have accepted part-time employment during parental leave will be granted priority-placement rights for continued part-time employment unless employment opportunities within the commuting area no longer exist because of the deactivation of a garrison.

15. RETENTION-CREDIT FACTORS

When only parts of an agency are deactivated and one or more from a group of employees must be selected for separation, the Law on Protection From Termination of Employment (*KSchG*) requires appropriate consideration of social factors (social selection). The social-selection process is also required for complete closures of agencies if continued employment within the commuting area with other agencies of the U.S. Army, AAFES-Eur, or USAFE is possible.

a. To comply with these legal provisions, the social factors and retention-credit points identified in appendix D will be used to determine the retention standing of affected employees. The questionnaire in appendix E will be used to request social data from affected employees. Appendix F defines creditable periods of employment for the social-selection process. In addition, a request for transmitting social data to the Foreign Forces Payroll Office will be filed (not applicable to AAFES-Eur). To determine the degree of social protection, a list will be developed that indicates the retention standing of all employees within the same competitive area.

b. The cutoff date for consideration of social data for assignment of retention-credit points is the anticipated date of issue of notices of termination or notices of termination for change of employment conditions. Notice periods are listed in the CTA II, section 44.

16. DEFINITION OF COMPETITIVE AREA AND QUALIFICATION LEVEL

To ensure proper social selection, each employee who is affected by a RIF must be assigned to a competitive area (a below) and a qualification level (b below).

a. A competitive area includes the entire works council agency. A works council agency includes all units whose employees are represented by the same local or joint works council. The competitive area may include annexes (*Nebenstellen*) located outside the commuting area of the main agency. Annex employees may be represented by the works council of the main agency.

b. A qualification level includes all positions for which an employee is fully capable of performing the major duties (referred to as *interchangeable*). Interchangeability is not restricted to positions identical to those occupied by an employee. It also includes positions involving similar duties that an employee can be expected to perform, if necessary, after a short period of job familiarization. The duration of the job familiarization will depend on the circumstances of the individual case (particularly on the employee's tenure, previous occupational training, and age), but may not exceed 3 months.

(1) The employee must meet the qualification standards in AE Pamphlet 690-70. When determining qualification standards according to AE Pamphlet 690-70, the employee's creditable, specialized experience must have been gained during the past 5 years. The employee's education and vocational training will always be recognized, even if the training dates back more than 5 years.

(2) In determining an employee's qualification level, full-time, part-time, and seasonal positions will be placed in separate qualification levels. Shift-work requirements and the number of hours regularly scheduled on a part-time work schedule may not be used as a basis for excluding positions from a qualification level.

17. RETENTION STANDING

The names of all employees in a competitive area will be listed on a retention register in the order of retention standing. Competing employees will be listed on a retention register by retention group. Retention group I is followed by retention group II. Retention group I employees will be administered according to paragraph 14. Retention group II employees will be listed by retention-credit points. SHEs and assimilated employees will be identified with an *S*, employees protected under the Mother Protection Law with an *M*, employees absent for military service with a *W*, and apprentices with an *A*. So-called 15/40 employees will be identified as such.

a. Employees with less than 6 months of creditable service will not be included in the social-selection process. These employees will be terminated from their position without regard to social factors.

b. Temporary employees whose temporary employment contracts will expire on or shortly after the effective date of the RIF (maximum of 2 months) will not be included in the social-selection process.

18. RETENTION ORDER IN THE DISPLACEMENT PROCESS

a. Employees in retention group I may be terminated only under the stringent provisions of section 15(4) and (5) of the Law on Protection From Termination of Employment (*KSchG*). Employees in retention group II will be selected in consideration of their retention standing points based on social factors. Normally, employees with the lowest number of retention-credit points will be displaced first.

b. Legal restrictions on terminating or placing employees with special retention rights must be observed. German labor laws require that all relevant factors be considered on an individual basis. Each case must be reviewed for adequate consideration of social factors and compliance with pertinent legal provisions.

19. EXEMPTION OF EMPLOYEES FROM SOCIAL SELECTION BECAUSE OF THEIR KNOWLEDGE, SKILLS, AND PERFORMANCE

To maintain the operational effectiveness of the agency, employees may be exempted from the social-selection process because of their knowledge, skills and performance. Their employment will continue despite lower social-retention standing, provided their continued employment is based on justified operational needs.

a. Exemptions are appropriate only when not exempting these employees from the social-selection process could have a severely negative effect on agency operations. In all cases, the interests of employees with higher retention standing must be compared to the operational interests of the organization before excluding employees from the social-selection process. During this process, all circumstances will be taken into consideration. This consideration must be comprehensive and in writing.

b. Only commanders and agency chiefs (colonel or above and civilian equivalent) are authorized to grant exemptions in coordination with the USAREUR G1 (AEAGA-CL). The USAREUR G1 (AEAGA-CL) must be consulted for questionable cases. For civilian support organizations, the commander of a U.S. Army parent unit is authorized to grant exemptions. For AAFES-Eur, the Commander, AAFES-Eur, is authorized to grant exemptions. This authority will not be further delegated.

c. Examples of organizational circumstances warranting an exemption include the following:

(1) Effective and timely completion of base-closure operations requires the retention of certain employees with special knowledge and skills. Maintaining special knowledge or skills must be a bona fide occupational necessity, not only desired, and must relate to the duties performed or to be performed based on the official position description.

(2) The employee is involved in a long-term project and termination of the employee would unduly delay the completion of the project or result in significantly exceeded projected costs.

(3) The nature of the assignment requires a special security clearance that the employee has obtained.

(4) Highly specialized and sensitive functions can be performed only by the employee, who is the sole expert in a unique and critical functional area of a given organization.

(5) The effective continuation of missions and functions requires the continuation of certain employees who have specialized knowledge and skills that were obtained through long-term, specialized training funded by the employer (U.S. Forces).

20. DEVIATING SOCIAL SELECTION TO KEEP A BALANCED PERSONNEL STRUCTURE WITHIN THE AGENCY

a. In case of partial closures of large agencies that do not result in the discontinuation of an entire functional field, as an exception, personnel who will undergo social selection may be divided into age groups within the individual qualification levels of the organization. An equivalent ratio of employees may be dismissed from these groups on a pro rata basis. This process may be used only if this is the only way to keep a balanced age structure within the organization (for example, a more or less constant ratio between older and younger employees). The social selection will then be conducted within the age groups.

(1) The application of this process must not change the age structure.

(2) The CHRA-E RIF Team must coordinate with the USAREUR G1 (AEAGA-CL) before using this process.

b. The selection process must conform to the following criteria:

(1) The following age groups will be established for individual qualification levels, and the social selection on a pro rata basis will be conducted within these groups:

(a) Employees 29 years old or younger.

(b) Employees 30 through 39 years old.

(c) Employees 40 through 49 years old.

(d) Employees 50 through 59 years old.

(e) Employees 60 years old or older.

(2) If a qualification level includes employees who may be terminated by ordinary notice as well as employees who, based on the Protection Agreement (so-called 15/40 employees), may not be terminated by ordinary notice, all employees who may be terminated by ordinary notice must be dismissed first within their age group ((1) above) on a pro rata basis. This is not applicable to 15/40 employees. If the number of eliminated positions within the same qualification level is higher than the number of employees who may be terminated by ordinary notice, the corresponding number of employees who may not be terminated by ordinary notice will be dismissed within their age groups on a pro rata basis.

(3) After the social selection within age groups is completed, the termination of employment will be in accordance with the rules specifically established by the Federal Labor Court for extraordinary notices of termination for operational reasons applicable to employees who may not be terminated by ordinary notice (Federal Labor Court decision of 27 Jun 02; case file number 2 AZR 367/01) as defined below:

(a) Employees 40 through 49 years old.

(b) Employees 50 through 59 years old.

(c) Employees 60 years old or older.

(4) If one qualification level includes only employees who may not be terminated by ordinary notice, dismissals will be distributed on a pro rata basis among the age groups of employees who may not be terminated by ordinary notice according to (3) above. Subsequent action is then governed by (3) above.

21. DISPLACEMENT

Displacement of LN employees will be made only within the same grade and is restricted to positions within employee qualification levels and competitive areas as defined in paragraph 16a and b. Granting on-the-job training under the provisions of paragraph 23b is not permissible for displacement (for example, the employee must be fully qualified to displace an employee with lower retention standing).

a. The social selection of affected employees for displacement purposes will be made within the competitive area and include all LN employees. Displacement procedures will not be applied to organizations outside the competitive area.

b. The displacement of other LN employees and U.S. family members is restricted to the same qualification level. The displacement process may not include positions outside the qualification level of affected employees.

c. LN positions that are included in an approved table of distribution and allowances or an equivalent manpower authorization document and occupied by U.S.-citizen family members within the same competitive area and qualification level must be vacated to place surplus LN employees. For AAFES-Eur, displacements of hourly paid U.S. employees who occupy LN positions will take place only if there are no vacancies available in the agency or within the commuting area.

22. RETENTION REGISTERS

Retention registers will be prepared as follows:

a. The retention register will list all employees by qualification level in a competitive area where the organizational change, RIF, transfer, or merger occurred.

b. Employees will be listed in descending order of their retention standing in the respective retention group (with employees who have the highest number of retention-credit points listed first) and identified to indicate their special protection from termination (paras 14 and 17).

SECTION V

PLACEMENT AND TERMINATION NOTICES

23. GENERAL

This section establishes the rights of employees to be placed in vacant positions in accordance with section 1 of the Law on Protection From Termination of Employment (*KSchG*), and defines employee placement rights in accordance with section 4 of the Protection Agreement.

a. Definitions. The following are definitions of terms used in this section:

(1) “Positions of equal value” are those in the same wage or salary group, or in a wage or salary group in another wage or salary tariff with comparable tariff rates. A comparable tariff rate is one that is equal to the employee’s former tariff rate or at least the previous rate. If the current wage or salary tariff does not provide for steps or comparable step rates, the rates of the respective end step will be used for comparison.

(2) “Reasonably acceptable positions” are those in a wage or salary group with a tariff rate that is not more than 20 percent below the employee’s current tariff rate.

(3) “Positions for which the employee is not fully qualified but for which the employee can obtain qualifications” are positions—

(a) Located within the commuting area of the employee.

(b) For which the employee has the required vocational training and certificates. The practical experience required by AE Pamphlet 690-70 will be reduced by 6 months at the time of reassignment.

(4) A “commuting area” includes all communities within a 60-kilometer radius of the community of the employee’s permanent duty station. If the residence of the employee is outside this radius, the employee’s commuting area will include all communities that are within 60 kilometers of the place of residence. In the latter case, the employee may change the commuting area to include all communities within 60 kilometers of the permanent duty station. This choice may be made only after the employee receives a notice of termination. The employee must specify his or her choice in writing within 1 week. During the 1-week deliberation period, no position offers will be made.

(a) Each employee will have only one commuting area.

(b) “Outside the commuting area” means one specific or regional location anywhere in Germany that must be specified in writing by the employee.

b. Placement Rights.

(1) Employees have the right to be placed in available positions of equal value. If a position of equal value is not available, the employee must be offered an available, reasonably acceptable position. Offers extend first to positions in all organizations within the commuting area of the U.S. Forces.

(2) Available positions of equal value or reasonably acceptable positions must be offered if an employee can obtain the required qualifications according to a(3)(a) and (b) above.

(3) On request from the employee, an available position of equal value must be offered outside the commuting area in one specific or regional location specified by the employee. Offers for positions outside the commuting area extend only to employing organizations whose employees are administered by CHRA-E or an AAFES-Eur HRO.

(4) Temporary and part-time positions will be offered if permanent full-time positions are not available. The employee must be informed of the consequences of accepting or declining these positions (for example, no further position offers will be made if an employee accepts a temporary position). Part-time positions may be offered to full-time employees on a voluntary basis, but not vice versa.

c. Available Vacancies. Available vacancies will be offered in the order established in paragraph 24.

(1) If several vacant positions are available for which the employee qualifies, the employee is entitled to the position that is closest to his or her current grade or salary group.

(2) If there are more employees with placement rights than positions available, placements will be made according to the social-retention standings of the employees.

(3) An employee's right for position offers continues until the last day of his or her employment. After the employee receives a notice of termination, the restrictions of paragraph 24a through d apply. If the employee declares in writing that he or she will in principle not accept any offer, no offer will be made. The employee must be informed of the consequences of declining a position offer. After the employee accepts an offer for a position of equal value or a reasonably acceptable position, no further offers will be made.

(4) All vacancies available for placements will be entered in the LNRS. AAFES-Eur will record these vacancies manually.

24. ORDER OF REFERRAL

Referrals for placing surplus employees will be according to the qualifications and social-retention standing of the employees. Positions of higher value and those with known potential for higher value will not be offered. Position offers made under the provisions of this regulation are based on legal and tariff placement rights granted to employees affected by a RIF. CPACs and AAFES-Eur HROs will inform agency chiefs of their obligation to accept surplus employees.

a. Available positions will be offered in the following order:

(1) Positions of Equal Value. Employees will be offered positions of equal value within the commuting area for which they qualify. If the employee declines an offer for a position of equal value for plausible personal reasons (for example, the distance from the place of residence combined with inconvenient transportation, inconvenient workhours, poorly reconcilable with the family situation), one more offer for a position of equal value must be made. If the employee declines an offer for a position of equal value without any reason or for implausible personal reasons, no further offers will be made and the employee will be terminated without indemnity payments under section 7 of the Protection Agreement.

(2) Reasonably Acceptable Positions. Up to four reasonably acceptable offers for positions within the commuting area may be made during the entire notice period.

(3) Vacancies Outside the Commuting Area for Which the Employee Qualifies. If an employee declines an offer for a position of equal value outside the commuting area for which he or she is qualified, no further offers will be made unless the employee had important personal reasons for declining the offer. If an employee declines an offer for important personal reasons that can be proven and verified objectively, the employee will receive all indemnity payments under section 7 of the Protection Agreement. If an employee declines an offer without providing important personal reasons, the employee will be terminated without indemnity payments under section 7 of the Protection Agreement.

(4) Vacancies for Which Employees Can Obtain Required Qualifications Within 6 Months. If an employee chooses to fill a vacancy for which he or she can obtain required qualifications within 6 months, the employee will be paid at the target grade of the position during the training period and receive formal or on-the-job training and coaching as appropriate. If the employee is unable to obtain required qualifications during the training period despite all documented training efforts, the employee may be terminated. If continued employment is possible according to the provisions of this regulation in another available position, the employee may not be terminated.

b. Full-time employees will be offered full-time positions or, on a voluntary basis, part-time positions. Employees who have extended workhours need not be offered another position with extended workhours. Organizations are not obligated to offer full-time positions to part-time employees. Part-time employees should be offered part-time positions with the same scheduled workhours. Offers for continued employment in temporary positions will also be made. Declining a temporary position will not result in denial of indemnity payments under section 7 of the Protection Agreement.

c. Position offers according to a(1), (2), and (4) above include positions in all organizations of the U.S. Forces. To honor the legal placement rights of surplus employees for vacancies, all elements of the U.S. stationing forces (U.S. Army organizations, USAFE, and AAFES-Eur) will continuously exchange information on all available vacancies.

d. Position offers will be sent to employees by regular mail. The deadline for the employee to accept or decline a position offer will be included in the letter.

25. FILLING LOCAL NATIONAL VACANCIES

a. The Law on Protection From Termination of Employment (*KSchG*) mandates that all opportunities for placing surplus employees must be exhausted before legally effective terminations ending employment may be issued. Under the provisions of the Protection Agreement, surplus LN employees are legally entitled to be placed in vacant and available positions in other U.S. Forces organizations within their respective commuting area.

b. To meet this legal obligation in relation to surplus LN employees in organizations affected by a RIF, the following policy applies to the backfill of LN positions in the commuting areas of organizations affected by a RIF:

(1) Without exception, organizations within the commuting area of organizations affected by a RIF will continue to initiate and submit RPAs to fill LN vacancies.

(2) RPAs to fill LN vacancies submitted to the CPOC on or after the date on which the organizational change was decided, and RPAs for positions not committed by that date, will be screened individually by the CPOC RIF Team to determine whether surplus employees in the organization under a RIF qualify for the vacancy or could become qualified within 6 months.

(3) When the screening process does not identify a potential position fill by a surplus employee of an organization under a RIF, authorization will be granted to permanently fill the position through merit promotion procedures or external recruitment.

(4) When the screening reveals a “match” (for example, one or more surplus employees of the organization under a RIF qualify or could become qualified for placement in a vacancy), the position will not be filled permanently. The following options are available:

(a) The vacancy will be held open until a final determination is made on the social standing of surplus employees in the organization under the RIF. Depending on the scope of the RIF, this process can take 2 to 3 months after the date on which the organizational change is decided. After individual employee social standings are determined, an employee’s placement in an available vacancy within the commuting area will be effected either by a transfer action or by a notice of termination for change of employment conditions, if the employee qualifies and is selected for placement based on his or her social standing in comparison with all other equally qualified surplus employees.

(b) Consideration may be given to filling manpower needs in the interim period by temporarily detailing employees from the organizations under the RIF to the respective functions. Managers must be aware that employees who have been accepted for internal or external retraining or qualification measures may not be available for certain periods. In addition, this may affect employee entrance-on-duty dates. Personnel who work outside their permanent duty station will be placed on temporary duty (TDY). Costs associated with TDY will be paid by the current employing organization. The participation rights of responsible works councils (losing and gaining) must be observed.

(c) Vacancies may be filled temporarily with external applicants. However, temporary appointments will not be extended beyond the effective date of the permanent placement of surplus employees in the positions.

(5) In general, positions in closing organizations will not be backfilled. When employees in closure-critical positions indicate a desire to conclude annulment contracts, their managers must consult with the servicing CPAC to determine available options that are in the best interest of both the organization and the employee. When a definite need to backfill a closure-critical position exists, the conditions of (4)(c) above will apply.

26. NOTICE TO EMPLOYEES

a. A notice of termination is permissible only when employment cannot be continued, even under changed conditions. A notice of termination for change of employment conditions (*Änderungskündigung*) constitutes a termination of employment with an offer for continued employment under changed conditions. The notice of termination and notice of termination for change of employment conditions may be challenged in labor court.

b. A notice of termination for change of employment conditions will be issued when the offer for continued employment is to a position outside the employee’s competitive area or, if within the competitive area, to a position of lower value, and a contractual change based on mutual agreement is not possible. Reassignment will be—

(1) Under the provisions of the right to direct (*Direktionsrecht*) and without issuing a notice of termination for change of employment conditions.

(2) Made to a position that is in the same or an equivalent wage or salary group, involves the same work conditions and similar duties, is within the same competitive area, and is at the same duty location.

c. Employees may accept a notice of termination for change of employment conditions with the reservation that termination from the current employment contract with an offer for continued employment is not socially unjustified. This reservation means the offered position is provisionally accepted pending a legal determination on the termination's validity. Employees must declare this reservation within 3 weeks after receiving notice and, within this period, file a suit with the labor court.

d. Notices of termination for change of employment conditions may not be unilaterally canceled after they have been issued. When an employee accepts an offer of transfer without reservation at the time a notice is issued or shortly afterwards, a new employment contract will begin. The old employment contract will expire on the date established in the notice.

e. Notices of termination are authorized only if no opportunities exist for continued employment within the commuting area up to the date that the notice is issued, and no positions within the competitive area can be made.

f. Position offers will—

(1) Be made in writing during the entire notice period.

(2) Allow employees 5 workdays to reply. A longer time limit (no more than 10 workdays) should be allowed when the position is located outside the employee's commuting area. If an employee does not respond within the time limit, this will be considered as a declination of the position offer.

g. Notices of termination and notices of termination for change of employment conditions will not be issued between 15 December and 15 January.

27. NOTICE PERIODS

Section 44 of the CTA II defines notice periods for ordinary notices of termination and notices of termination for change of employment conditions.

28. NOTICE LETTERS

Notices of termination and notices of termination for change of employment conditions will be issued in a manner that ensures compliance with required notice periods.

a. Notice letters will be hand-carried to employees at their place of work. The employee will acknowledge receipt by signing and dating a copy of the letter.

b. If an employee is absent from work, the notice letter will be hand-carried to the employee's place of residence and given to the employee personally or placed in the employee's mailbox before the start of the notice period. When a notice letter is hand-carried to the employee's place of residence, a witness should be present who can confirm the content and delivery of the letter.

c. In exceptional cases and as a last resort, the notice letter may be sent to the employee's residence by special registered mail (*Einwurfeinschreiben*).

d. German versions of notice letters are legally binding and must be signed. English courtesy translations will be provided only as necessary.

e. The authority to sign notices of termination and notices of termination for change of employment conditions is vested in the following positions:

(1) The commander or chief of the agency as indicated on the employment contract.

(2) The commander's designated representatives who represent management in personnel-representation matters, provided they have written delegated authority to administer employee terminations. On request, the original delegation authority must be presented to employees issued notices of termination or notices of termination for change of employment conditions.

(3) AAFES-Eur general managers, human resources managers, and persons who have been delegated authority in writing by the Commander, AAFES-Eur, through the general manager to issue notice letters.

f. CPACs and AAFES-Eur HROs must ensure that the LN employees they serve are informed of who has authority to sign notice letters.

g. The nonconcurrence of the local works council, the district works council (DWC), and the Head Works Council, USAREUR, in individual notices of termination or notices of termination for change of employment conditions must be attached to the notice letters when issued.

h. At the request of the affected employee, the employee or the designated representative will be given detailed information about the social-selection process, point system, and the reason the social selection was made. Information must include the names of employees who were included in the competition and their age, family status, number of children, creditable prior service, and handicap degree.

29. EFFECTIVE DATES OF REASSIGNMENTS AND TRANSFERS

a. Reassignments and transfers will be effective any time after the employee and the supervisor agree to the placement, but not later than the day after the last day of the notice period. When establishing the effective date, operational needs and the employee's interests must be considered and the works-council participation according to paragraph 30 must be completed.

b. If an employee accepts a position in a lower wage or salary group, the employee will be compensated according to the higher wage or salary group until the end of the notice period.

SECTION VI

PARTICIPATION OF THE WORKS COUNCIL AND SHE REPRESENTATIVES GROUP

30. PARTICIPATION IN THE ORGANIZATIONAL MEASURE

a. Works council participation in organizational changes is required by the GPRL. The participation of the SHE representatives group is required by the Social Security Code IX, Part 2 (Severely Handicapped Law).

b. Except for cases where paragraph 1, sentence 4, of the Protocol of Signature re Article 56, paragraph 9, of the SA NATO SOFA applies, planned organizational changes, depending on their scope, are subject to formal cooperation of the Head Works Council, USAREUR. (If the decisions are made in the United States, the works council is only to be informed of the decisions.) If SHEs or employees with assimilated status are affected by the change, the USAREUR Head SHE Representatives Group will also be given the opportunity to be heard.

c. Before a commander or head of an intermediate authority approves a proposed organizational change, the change, depending on its scope, is subject to formal information or cooperation of the respective DWC. If SHEs or employees with assimilated status are affected, the respective district SHE representatives group must be heard.

d. If a commander or agency chief of a subordinate or independent agency that is represented by a local works council proposes an organizational change, cooperation procedures will be initiated with the respective local works council and hearing procedures, if applicable, will be initiated with the responsible SHE representative at this level.

31. PARTICIPATION IN INDIVIDUAL PERSONNEL ACTIONS

a. Agency chiefs will discuss all individual personnel actions with their works councils under cooperation or codetermination procedures. Individual personnel actions that affect SHEs or employees with assimilated status are subject to a hearing of the SHE representatives group. Notices of termination and notices of termination for change of employment conditions—

(1) Require prior approval of the integration office.

(2) For pregnant employees, employees during the first 4 months after childbirth, and employees on parental leave, require advance approval of the trade control office (*Gewerbeaufsichtsamt*) or of the highest occupational health and safety authority of the respective *Bundesland* or its designated office.

b. The timely and comprehensive involvement of works councils and the responsible SHE representative in all phases of the RIF is critical.

(1) Before notices of termination and notices of termination for change of employment conditions are discussed, retention registers, retention standings, exceptions to retention standings, and the reconciliation of interests for individual notices of termination and notices of termination for change of employment conditions must be discussed as early as possible with the works council and, if appropriate, with the SHE representatives group. The request for works council cooperation must include all available information. Appendix G is a sample reconciliation of interests for notices of termination for change of employment conditions.

(2) The sample letter in appendix C will be used to initiate cooperation when notices are given for operational reasons.

c. Ordinary notices of termination, notices of termination for change of employment conditions, and extraordinary notices with a social expiration period are subject to cooperation with the works council of the releasing agency. The placement of employees in the gaining agency based on reassignment or notice of termination for change of employment conditions is subject to codetermination with the works council of the gaining agency in accordance with section 69, in conjunction with section 75 (1) 3, of the GPRL. If SHEs are affected, the responsible SHE representatives group of the releasing and the gaining agency must be given an opportunity to provide comments.

d. In cases of reassignments or notices of termination for change of employment conditions, the approval of the works council of the gaining agency is required before the codetermination or cooperation procedure is initiated with the works council of the releasing agency.

SECTION VII

PAY PROTECTION AND FINANCIAL ASSISTANCE

32. GENERAL

a. Employees who are reassigned to positions in lower salary or wage groups as a result of a RIF will receive pay protection according to sections 5 and 8 of the Protection Agreement and pertinent implementing instructions.

b. Employees who are reassigned outside their commuting area as a result of a RIF will be authorized relocation allowances according to AE Regulation 690-68.

c. Employees who are detailed to their gaining agency or any other agency within the commuting area temporarily until their reassignment, notice of termination, or notice of termination for change of employment conditions becomes effective will be reimbursed for travel costs and daily allowances in accordance with the provisions of the CTA II, appendix R, for the duration of the temporary detail. Travel time is considered worktime.

d. Indemnity payments by means of annulment or liquidation contracts will be effected in compliance with the provisions of the Protection Agreement as well as with out-of-tariff instructions on this agreement issued by HQ USAREUR/7A. HQ USAREUR/7A out-of-tariff instructions do not apply to AAFES-Eur.

SECTION VIII

RECORDS MANAGEMENT OF RIF ACTIONS AND TRANSFERS OF FUNCTIONS

33. GENERAL

a. The CHRA-E RIF Team, in cooperation with CPACs, will establish electronic RIF folders for each agency undergoing a RIF, transfer, or merger. AAFES-Eur HROs will establish hardcopy RIF folders for AAFES-Eur agencies. The folder will include the following:

(1) Position offers, responses to position offers, and reactions from works councils and SHE representatives to retention registers.

(2) Retention registers and social factors obtained from employees and the Foreign Forces Payroll Office.

(3) Workpapers and copies of correspondence to employees, managers, supervisors, works councils, and SHE representatives groups.

b. The folder will be kept for 2 years after the RIF action or transfer of functions is completed, or after labor court cases are resolved, whichever is later. For AAFES-Eur, the records will be transferred to the HRO of another agency when an agency closes. The AAFES-Eur Region Human Resources Directorate will determine which HRO will assume responsibility for the records in each case.

APPENDIX A REFERENCES

SECTION I PUBLICATIONS

Supplementary Agreement to the North Atlantic Treaty Organization Status of Forces Agreement

Law on Protection From Termination of Employment (*Kündigungsschutzgesetz*)

Law on Protection of Employed Mothers (*Mutterschutzgesetz*)

Social Security Code IX, Rehabilitation and Integration of Handicapped Persons, Part 2 (Severely Handicapped Law) (*Sozialgesetzbuch IX, Rehabilitation und Teilhabe behinderter Menschen, Teil 2 (Schwerbehindertenrecht)*)

Civil Code (*Bürgerliches Gesetzbuch*)

Federal Personnel Representation Law (*Bundespersönalvertretungsgesetz*)

Job Protection Law (*Arbeitsplatzschutzgesetz*)

Law on Aptitude Exercises with Armed Forces (*Eignungsübungsgesetz*)

Collective Tariff Agreement (CTA II)

Tariff Agreement of 31 August 1971 for the Social Security of Employees of the Sending States Forces in the Federal Republic of Germany (*Tarifvertrag vom 31. August 1971 zur sozialen Sicherung der Arbeitnehmer bei den Stationierungskräften im Gebiet der Bundesrepublik Deutschland (TASS)*)

Tariff Agreement, 2 July 1997, Protection From Rationalization Measures, Termination of Employment, and Income Protection (Protection Agreement) (*Tarifvertrag vom 2. Juli 1997 über Rationalisierungs-, Kündigungs- und Einkommensschutz*)

USEUCOM Directive 30-6, Administration of Civilian Employees in the U.S. European Command (USEUCOM) Area of Responsibility (AOR)

AR 25-400-2, The Army Records Information Management System (ARIMS)

AE Regulation 10-5, HQ USAREUR/7A and Select Commands

AE Regulation 690-68, Local National Transfer and Appointment Benefits in Germany

AE Regulation 690-70, Recruitment and Staffing for Local National Employees in Germany

AE Pamphlet 690-60, Tariff Agreements That Apply to Persons Employed by the U.S. Forces in Germany

AE Pamphlet 690-70, Qualification Standards for Local National Positions

USAREUR Regulation 690-69, Local National Employment Policy in the Federal Republic of Germany—Tariff Implementation and Overtariff Conditions

SECTION II

FORM

DA Form 2028, Recommended Changes to Publications and Blank Forms

APPENDIX B

JUSTIFICATION OF COMPELLING OPERATIONAL REQUIREMENTS FOR ORGANIZATIONAL CHANGES

B-1. BINDING LEGAL OBLIGATION

In connection with organizational changes, management is obligated to justify and possibly prove in labor court that alleged compelling operational requirements for the organizational change actually exist.

B-2. INVALIDITY OF CHANGE

a. Based on the Law on Protection From Termination of Employment (*Kündigungsschutzgesetz* (*KSchG*)), the termination of employment of an employee is legally invalid if it is socially unjustified. A termination is considered socially unjustified if, among other reasons, it is not caused by compelling operational or organizational requirements that prevent the continued employment of the employee in the organization.

b. In addition, the ordinary termination of employment of employees who have special protection from termination (for example, works council members, severely handicapped employee representatives) is possible only if both of the following apply:

(1) A works council agency is closed or the employee is employed in a department of the works council agency that is closed.

(2) It is not possible for organizational reasons (for example, the complete discontinuance of the affected employee's function) to transfer the employee to another department of the works council agency.

B-3. COMPELLING OPERATIONAL REQUIREMENTS

a. By using the indeterminate legal term "compelling operational requirements," German legislators wanted to take into account that many external factors (for example, technological developments, changes in work requirements) exist in organizational processes that cause personnel reductions.

b. The rules governing employee protection from termination applicable to rationalization measures in private industry apply similarly to economic measures in public service. These principles are equally applicable to organizational changes of the U.S. Forces that result in employee termination actions. For example, if specific positions are eliminated during a reorganization because of general economic measures or changes in technology, as a matter of principle, this elimination of positions must be regarded as a compelling operational requirement.

B-4. JUDICIAL REVIEW

Subject to the control of abusive practices, organizational decisions must principally be assumed as a fact by the labor courts. However, the actual implementation of such a decision is, in its entirety, subject to judicial review. In conformity with this, the following principles apply:

a. Subject to judicial review in its entirety is the question as to whether external or internal factors were critical to a decision.

(1) Examples of external or internal factors in this context include an irreversible decline in workorders, a reduction of the customer base, loss of sales, a documented decline of repair and maintenance requirements, permanent degrading of quality-of-life standards, and financial difficulties. This also applies to the effect of management's organizational decision within the internal operations of the organization. Therefore, the question as to whether or (as applicable) on which scale positions have been eliminated in full or in part as a result of a rationalization measure driven by a technological change is subject to a full labor court review.

(2) Terminations are considered to be for compelling operational reasons only if it is absolutely certain that (based on facts that can be reconstructed) because of external or internal reasons, one or more employees are no longer needed.

b. Changed organizational conditions need not lead to the elimination of a specific position. The causal linkage between the external or internal organizational reason and the excess employee is sufficient. For example, in connection with internal organizational measures, assessments must be made regarding the question as to whether or not the volume of work for specific employees or individual employee groups has changed in terms of quantity or quality as a result of organizational or technical changes.

c. The question as to whether or not it is in fact an organizational decision is also subject to a full review by the labor courts. Employee termination as such is not an organizational decision; it can be only its consequence.

B-5. BUDGET CUTS

The principles of the Law on Protection From Termination of Employment (*KSchG*) applicable to rationalization measures in the private sector apply similarly to cost-cutting measures in public service. In addition, budgeted position savings of a public body may justify terminations for operational reasons. For example, if budget cuts eliminate certain positions that are defined by factual characteristics in operations or administrations of public law, or if in the course of general cost-cutting measures, organizational or technical changes are being implemented that result in certain positions being eliminated, this constitutes an operational requirement.

a. If budget legislators prescribe only a specific number of position savings, management must implement the decision and determine how many positions in which areas will be eliminated. The specific implementation of decisions in its entirety is subject to judicial review. The question as to whether the continued employment of individual employees fails because of budgeted general cost-cutting measures is also subject to review in its entirety. The court may therefore review whether management simply took a schematic approach by using an index number system and failed to determine whether individual agencies lack work or have a corresponding excess of positions.

b. If functional areas are to be taken over by Soldiers, this also constitutes an urgent operational requirement for a termination. In these cases, the public employer must also review whether continued employment in another position is possible.

B-6. RATIONALIZATION

The term “rationalization measure” describes internal changes in the technical or organizational area that are being implemented with the objective of improving (internal) efficiency. Rationalization measures may also include cases where an employer gives up his or her status as an employer and, by changing the organization, transfers the work to freelance staff. If an employer wants to transfer functions to another enterprise, continue to be directly in charge of the performance of work, and therefore keep his or her essential employer responsibilities, the possibility for employment in the organization has not been eliminated and no urgent operational requirement for a termination exists. The same applies to cases where the employer wants to dismiss employees and employ loan workers from a distribution company.

a. The decision to implement technical or organizational rationalization measures is subject to judicial review only to prevent improper use and arbitrariness. The personnel consequences resulting from rationalization measures are, however, subject to judicial review in their entirety. This includes in particular the review as to whether and to which degree the demand for continued employment of employees has been eliminated by a rationalization measure. If functions have been only partly eliminated and an employer wants these functions to be performed by part-time employment, the employer is obligated to offer the affected employee continued employment in the form of part-time employment.

b. Rationalization measures resulting in the loss of jobs are considered to be an operational reason for termination only if, at the time of the termination, they have already taken on discernible forms.

c. Even without an objection from the works council, the employer, in case of a rationalization measure, must review whether other employment is possible, with or without retraining, in the organization or in another organization of the enterprise.

APPENDIX C

SAMPLE LETTER FOR REQUESTING WORKS-COUNCIL COOPERATION AND CONCURRENCE WITH LOCAL NATIONAL REDUCTION-IN-FORCE TERMINATION ACTIONS

Mr./Ms.
Chairman
Works Council
(Complete Address)

date

Dear Mr./Ms. _____:

This is to request your cooperation and concurrence with _____ proposed ordinary notices of termination ending employment and _____ proposed ordinary notices of termination changing employment conditions of local national (LN) personnel. Names of affected employees, the type of proposed personnel action, the proposed effective date of terminations, the compelling operational reasons, and the reason for the actions are enclosed. This request is in accordance with section 72, in conjunction with sections 79 and 75(1)2 (*if notices involve a change of employment conditions with an offer of a position of lower value*), modified Federal Personnel Representation Law (GPRL).

These termination actions result from (*describe the organizational change and refer to the applicable directive or order*). Pertinent documentation is in enclosure 1.

The proposed terminations are for compelling operational reasons. Because of current world events, changing military requirements in Europe, and the resulting reductions in U.S. military troop strength, the U.S. Forces in Europe must adjust its base structure to support future mission needs. Consequently, actions that adversely affect LN employees are for military reasons within the meaning of the Social Security Agreement (SSA). Confirmation of the German Federal Ministry of Finance regarding the applicability of the SSA to the planned separation actions is in enclosure 2. Affected employees who meet the personal prerequisites will be entitled to benefits under the SSA.

The organizational change was discussed with the Head Works Council, USAREUR, under the cooperation procedure in accordance with section 72, in conjunction with section 78(1), GPRL, before a decision was made. Pertinent documentation is in enclosure 3.

In compliance with sections 95 and 97, Social Security Code, Part 2 (Severely Handicapped Law), HQ USAREUR/7A obtained and considered the comments of the USAREUR Head Severely Handicapped Employee (SHE) Representative before a decision was made (encl 4).

Include if applicable: The old and new tables of distribution and allowances are in enclosures 4 and 5. A total of _____ LN positions have been eliminated. These positions were occupied by _____ LN employees when the decision on the organizational change was made. The names of these employees are also included in enclosure 5. (*When an organization is directed by a higher agency or decides on its own to eliminate a certain number or percentage of positions, the reasons for the operational requirement for each elimination must be provided. In this case, this paragraph must be worded accordingly and the enclosure must indicate the reasons for eliminating each position.*)

A list of planned ordinary notices of termination ending employment is in enclosure 6. A list of planned ordinary notices of termination for change of employment conditions is in enclosure 7. *(The list must include the last and first name of each employee; the position title, series, and grade; the notice period; and the planned effective date of the separation.)*

Include only when a selection has been made: Management's reasons for each planned termination action are in enclosure 8.

A total of _____ SHEs and _____ employees with an assimilated status are affected. In accordance with sections 95 and 97, Social Security Code IX, Part 2 (Severely Handicapped Law), the SHE representative was heard. The SHE representative's comments, which will be duly considered, are in enclosure 9. *(If the SHE representative fails to respond, a statement to that effect must be made.)*

A copy of the social-retention register required by AE Regulation 690-84, appendix E, is in enclosure 10. Supporting material used to develop the register is attached as follows:

- Information from the Foreign Forces Payroll Office (encl 11). *(Not applicable to AAFES-Eur.)*
- Copies of employee questionnaires for additional social data (encl 12).
- Copies of a summary of retention-register data for each employee (encl 13).
- A list of all employees with special legal retention rights (encl 14).
- Copies of all reconciliations of interest (encl 15).

(The list of works council members, SHEs, and so on must include the name, position title, series, grade, and notice period.)

Copies of the all affected employees' registrations in the Local National Referral System (LNRS) are in enclosure 16. *(If employees have already been placed through the LNRS, a corresponding note is required.)*

An updated list of LN position vacancies of U.S. Forces organizations (including Army in Europe, USAFE, and AAFES-Eur) within the individual employee's commuting area is in enclosure 17.

A list of U.S. citizen family members who currently occupy LN positions within this agency and who are in the same competitive level as affected employees is in enclosure 18.

A list of employees who were affected by RIF actions and who were later placed under provisions of the Protection Agreement or by displacing a U.S. citizen family member is in enclosure 19. *(Placements that were made out of order must be explained in detail.)*

A list of all employees who received offers of continued employment but have declined the offers is in enclosure 20 with pertinent documents.

Your understanding and support for these unavoidable actions is solicited. Request your concurrence.

Sincerely,

(Agency Chief)

xx Enclosures

(All enclosures must be individually listed. Enclosures identified in this appendix may not be sufficient. Other relevant documents (for example, copies of legal, tariff, and regulatory provisions to which reference is made) must also be provided.)

I herewith acknowledge receipt of the letter with all enclosures:

*Works Council Chairperson or
works council member authorized
to receive requests for cooperation
on behalf of the works council*

Date

APPENDIX D

SHOP AGREEMENT ON SOCIAL SELECTION-RETENTION-CREDIT FACTORS AND RETENTION-CREDIT POINTS

HEADQUARTERS, UNITED STATES ARMY, EUROPE, AND SEVENTH ARMY AS HIGHEST SERVICE AUTHORITY OF THE U.S. ARMY IN GERMANY

AND THE

HEAD WORKS COUNCIL, UNITED STATES ARMY, EUROPE

CONCLUDE THE FOLLOWING SHOP AGREEMENT

pursuant to the provisions of Section 73, in conjunction with Section 69 and Section 76, Paragraph 2, Number 8, German Personnel Representation Law (GPRL) (modified version):

1. Purpose. This shop agreement governs the social selection in a reduction in force (RIF) action for organizational reasons of local national (LN) employees who are employed under the provisions of the Collective Tariff Agreement II (CTA II) in organizations of the United States Army or other U.S. Forces organizations in Germany, and are represented by the Head Works Council (HWC), USAREUR.

2. Applicability. This shop agreement applies to—

a. Organizations of USAREUR and other U.S. Forces organizations in Germany employing local national employees or Civilian Support Group employees who are paid from appropriated and nonappropriated funds and administered by the United States Army Civilian Human Resources Agency, Europe Region (CHRA-E).

b. Organizations of the Army and Air Force Exchange Service, Europe (AAFES-Eur), in Germany.

3. Agreement. For the social selection in connection with terminations for organizational reasons, the following social selection-retention-credit factors and retention-credit points will be used:

a. Length of Service: 2 points will be credited for each completed year of creditable service. With the completion of 10 years of service, additional bonus points will be granted as follows. Creditable service is prescribed in AE Regulation 690-84, appendix F.

4 points	for 10 years of service
8 points	for 15 years of service
12 points	for 20 years of service
16 points	for 25 years of service
20 points	for 30 years of service

b. Age: 1 point will be credited for each completed year of age beginning with age 18, with the total number of points not to exceed 45.

c. Support Obligations:

(1) 8 points will be credited for each dependent child. Dependent children include children of the employee or employee's spouse for whom an entitlement for payment of children's allowance exists. Included are children who are natural offspring, stepchildren, adopted children, foster children, and other persons considered children. To be recognized as dependent children, an appropriate entry on the tax card or receipt of statutory children's allowance is required.

(2) 8 points will be credited for a spouse or registered civil partner without an income from self-employment or employment. Income from so-called insignificant employment (below the exemption limit of at present 400 euros per month) will not be considered.

(3) 4 points will be credited for a spouse or registered civil partner with an income above the insignificant employment limit provided that the spouse's monthly income does not exceed the employee's monthly income (proof is required).

(4) 4 additional points will be credited for each dependent child provided the child lives in a joint household with a single-parent employee.

(5) 4 points will be credited for each additional person who is considered dependent because of legal obligations (corresponding official verification required).

d. Severely Handicapped Persons: Severely handicapped persons in the meaning of this shop agreement include severely handicapped employees with a handicap degree of at least 50 and personnel of equal status.

(1) Severely handicapped employees and employees with equal status will receive a base rate of 8 points.

(2) Severely handicapped employees will receive additional points based on the table below:

Table of Additional Points

Handicap Degree 50:	8 points
Handicap Degree 60:	9 points
Handicap Degree 70:	10 points
Handicap Degree 80:	11 points
Handicap Degree 90:	12 points
Handicap Degree 100:	13 points

e. To resolve cases involving an equal number of social-retention points, the following social-retention credit factors will be used as tiebreakers. They will be used in the following order:

(1) A permanent health impairment recognized by the Federal Accident Insurance (10 percent and above) that the employee acquired in connection with employment with the U.S. Forces.

(2) Length of service.

(3) Support obligations.

(4) Single parent.

(5) Severely handicapped status.

4. Questionnaire. Enclosed is a "Questionnaire for Social Data to Determine Social-Retention Standing During a Reduction in Force and to Determine Prospects for Continued Employment" that will be used to obtain social data. Social selection-retention-credit factors that are not established or proven beyond doubt will not be considered.

5. Effective Date and Termination.

a. This shop agreement enters into effect on the date on which both parties to the agreement have affixed their signatures in paragraph 6.

b. This shop agreement may be terminated by either party to the end of a calendar month with an advance notice period of 3 months. After the termination has become effective, the provisions of this shop agreement will stay in effect until a new agreement regulating the above matters has been concluded. The shop agreement is terminated automatically at the time a new agreement governing the matters regulated in this agreement enters into effect.

6. Signatures.

-----Original signed by-----

JEANNIE A. DAVIS
Director of Civilian Personnel
United States Army, Europe

on 26 January 2005

-----Original signed by-----

HELMUTH ARNOLD
Chairman
Head Works Council

on 26 January 2005

-----Original signed by-----

ANDREAS ROGEL
Deputy Chairman and
Representative of Blue Collar Employees

on 26 January 2005

-----Original signed by-----

HEIDI STALEY
Head Severely Handicapped Employee
Representative

on 26 January 2005

APPENDIX E

QUESTIONNAIRE FOR SOCIAL DATA TO DETERMINE SOCIAL-RETENTION STANDING DURING A REDUCTION IN FORCE AND TO DETERMINE PROSPECTS FOR CONTINUED EMPLOYMENT

1. Name and address:	To prepare for the proper implementation of a change within your organization that requires application of reduction in force (RIF) procedures, you must answer the questions below and provide pertinent documentation. Information relevant to a RIF that is included in our automated personnel system is already preprinted on this form. Please review this information and correct wherever necessary. The information provided will be treated as confidential.
Employee identification number:	

2. Date of birth:

3. Employing organization:

4. Position title:

5. Grade:

6. Monthly wage or salary: _____ euros

7. Creditable service:

8. Regular workhours:

9. Tax class:

10. Tax exemption for children:

11. Are you a member of the protected group of severely handicapped or assimilated employees?

☐ No ☐ Yes

If Yes, indicate the degree of handicap: _____. (Please provide a copy of the severely handicapped pass.)

12. If the handicap degree is less than 50, are you recognized as an employee with assimilated status?

☐ No ☐ Yes (Please provide a copy of the recognition certificate.)

13. Are you currently protected under the Mother Protection Law or the Law on Childcare Leave?

☐ No ☐ Yes

14. Marital Status:

☐ single ☐ married ☐ widow(er) ☐ divorced

☐ registered civil partner ☐ permanently separated

15. Does your spouse or registered civil partner draw his or her own income? (Income falling below the income limit for insignificant employment (currently 400 euros per month) will not be considered.)

☐ No ☐ Yes

If yes, is the monthly income higher than yours?

☐ No ☐ Yes (If no, please attach proof.)

16. Liability for family member support:

☐ No ☐ Yes Number of children: _____

(This includes children of the employee who are unmarried and under 18 years of age or who are entitled to children allowance, regardless of age. To have your children recognized as dependent children, an appropriate entry on an income tax card or proof of support liability is required.)

Other persons entitled to financial support (please provide a copy of the approval document):

17. Are you a single parent?

☐ No ☐ Yes

18. Do you have a permanent, recognized health impairment that was caused by employment with the U.S. Forces?

☐ No ☐ Yes (Please provide certification from the Federal Statutory Accident Insurance Agency.)

With your signature, you certify that the entries on and the attachments to this form are true, complete, and correct to the best of your knowledge:

Place, date

Signature

The completed questionnaire must be returned to the servicing personnel office by _____.

Additional Data for Use in the Local National Priority Placement Program

The information solicited on this form is used to record and maintain opportunities for continued employment by means of the automated Local National Priority Placement Program (LN PPP). Providing this information is completely voluntary; we ask you, however, to complete this form as thoroughly as possible to enhance and increase continued employment opportunities for yourself.

1. Name: _____ Employee Identification Number: _____

2. Home telephone: _____

3. Duty telephone: _____

4. Mobile telephone: _____

5. E-mail address: _____

6. Supervisor: _____

7. Telephone number: _____

8. Available for the following type of work:

- ☐ Full time ☐ Part time ☐ On call ☐ Shift
☐ Night ☐ Weekend ☐ Holiday ☐ Rotating shift

9. Language and other knowledge and skills:

(Level I: basic, Level II: intermediate, Level III: fluent in speaking and writing)

Definition:

Level I: Basic knowledge that enables the speaker to have simple conversations on general topics and receive verbal and written instructions.

Level II: Speaking: Able to meet most work requirements with language use that is acceptable and effective. Able to speak the language with sufficient structural accuracy and vocabulary to participate effectively in most formal and informal conversations on practical, social, and professional topics. **Reading:** Able to read within a normal range of speed and with almost complete comprehension of a variety of material on unfamiliar subjects. Can comprehend a variety of styles and forms pertinent to professional needs. Rarely misinterprets texts. **Writing:** Able to write routine correspondence. Shows ability to write with some precision and some detail about most common topics.

Level III: Speaking: Able to use the language fluently and accurately on all levels normally pertinent to professional needs. Language use and ability to function are fully satisfactory. **Reading:** Able to read fluently and accurately all styles and forms of the language pertinent to professional needs. **Writing:** Able to write the language precisely and accurately in a variety of prose styles pertinent to professional and educational needs. Errors in grammar are rare, including those in complex structures. Able to adapt the language to the situation. Able to write on all topics normally pertinent to professional needs and on social issues of a general nature.

- | | | |
|---|--|--|
| <input type="checkbox"/> English Level I | <input type="checkbox"/> English Level II | <input type="checkbox"/> English Level III |
| <input type="checkbox"/> German Level I | <input type="checkbox"/> German Level II | <input type="checkbox"/> German Level III |
| <input type="checkbox"/> Other Language Skills: _____ | | |
| <input type="checkbox"/> Drivers License Class B | <input type="checkbox"/> Drivers License Class C | <input type="checkbox"/> Bus/Passenger License D |
| <input type="checkbox"/> Forklift Operator | <input type="checkbox"/> Dangerous Cargo License | <input type="checkbox"/> Crane Operator |
| <input type="checkbox"/> Motorcycle License (A) | <input type="checkbox"/> Typing | <input type="checkbox"/> Stenography |
| <input type="checkbox"/> IT Skills: _____ | | |

10. Additional Skills/Qualifications/Certificates/Awards (please attach copies):

Place, date

Signature

Information About Your Commuting Area

If your residence is within a radius of 60 kilometers from your current permanent duty station, your commuting area includes all organizations that are located within a radius of 60 kilometers from your permanent duty station. (You will be registered automatically for all duty stations within your commuting area.)

If your residence is outside a radius of 60 kilometers from your current permanent duty station, your commuting area can include all organizations that are within the radius of 60 kilometers from your permanent residence. At your discretion, you may choose a radius of 60 kilometers from your duty station as your commuting area.

☐ I choose the radius of 60 kilometers from my current duty station as the commuting area.

☐ I choose the radius of 60 kilometers from my current residence as the commuting area.

You must make your choice of commuting area within 1 week after receipt of the termination letter.

The distance is always measured from center of town to center of town.

If you wish to be considered for continued employment outside your commuting area, you must select one or more locations in the list below for which you wish to be considered for employment in available vacant positions. If, after receipt of the termination letter, you decline an offer for continued employment in an equivalent position at one of the selected locations, no further offers will be made in or outside the commuting area. In this case, your employment will be terminated without benefits under paragraph 7 of the Protection Agreement.

I am specifically interested in continued employment at the following specific or regional location, all of which are outside my commuting area:

- | | | | |
|--------------------------------------|--|---|--------------------------------------|
| <input type="checkbox"/> Ansbach | <input type="checkbox"/> Frankfurt | <input type="checkbox"/> Heidelberg | <input type="checkbox"/> Pirmasens |
| <input type="checkbox"/> Babenhausen | <input type="checkbox"/> Friedberg | <input type="checkbox"/> Hohenfels | <input type="checkbox"/> Ramstein |
| <input type="checkbox"/> Bamberg | <input type="checkbox"/> Garmisch | <input type="checkbox"/> Illesheim | <input type="checkbox"/> Schweinfurt |
| <input type="checkbox"/> Baumholder | <input type="checkbox"/> Geilenkirchen | <input type="checkbox"/> Kaiserslautern | <input type="checkbox"/> Sembach |
| <input type="checkbox"/> Bitburg | <input type="checkbox"/> Gernersheim | <input type="checkbox"/> Kitzingen | <input type="checkbox"/> Spangdahlem |
| <input type="checkbox"/> Bremerhaven | <input type="checkbox"/> Giebelstadt | <input type="checkbox"/> Landstuhl | <input type="checkbox"/> Stuttgart |
| <input type="checkbox"/> Büdingen | <input type="checkbox"/> Gießen | <input type="checkbox"/> Mainz-Kastel | <input type="checkbox"/> Vilseck |
| <input type="checkbox"/> Butzbach | <input type="checkbox"/> Grafenwöhr | <input type="checkbox"/> Mannheim | <input type="checkbox"/> Wiesbaden |
| <input type="checkbox"/> Darmstadt | <input type="checkbox"/> Grünstadt | <input type="checkbox"/> Miesau | <input type="checkbox"/> Würzburg |
| <input type="checkbox"/> Dexheim | <input type="checkbox"/> Hanau | <input type="checkbox"/> Oberammergau | |

☐ Any location in Germany

Place, Date

Signature

APPENDIX F

DEFINITION OF CREDITABLE SERVICE FOR DETERMINING RETENTION-CREDIT POINTS, NOTICE PERIODS, AND ELIGIBILITY FOR BENEFITS UNDER THE SOCIAL SECURITY AGREEMENT

F-1. Periods of employment defined in this appendix will be recognized as creditable continuous service, subject to the conditions stated below. Previous civilian employment will be credited after the employee completes the probationary period. Previous military service will be credited retroactively to the date of appointment after the employee completes 6 months of employment with the U.S. Forces. Periods of employment that were terminated for cause will not be recognized as creditable service. Creditable service includes—

a. Civilian employment as follows:

(1) Under tariff or local provisions with the Belgian, British, Canadian, French, and U.S. Forces in Germany.

(2) With labor service units in France.

(3) With elements of the U.S. Forces outside Germany in third-country-citizen or local national (LN) status.

NOTE: Service with one or several organizations mentioned in (1) through (3) above will not be credited if the employee had a break in service of more than 6 months. If the break in service was the result of a reduction in force (RIF) action, periods of employment preceding the RIF termination will be credited provided the break did not exceed 12 months.

b. Employment without a break in service of more than 1 month and without other intermediate employment as follows:

(1) Employment with U.S. Government agencies or organizations other than the U.S. Forces.

(2) Employment with U.S. Forces-affiliated organizations, such as the United Nations Relief and Rehabilitation Association.

(3) Employment with a U.S. Forces contractor operating a U.S. Government-owned facility, or with a U.S. Government contractor exclusively serving the force.

(4) Civilian employment under the jurisdiction of the German Federal Minister of Defense.

c. Employment with the 4th Allied Tactical Air Force any time from 1 March 1956 through August 1958, provided the service was immediately preceded and followed by employment with a USAFE activity.

F-2. Periods of childcare leave are periods of employment. If an employee resigns exclusively to take care of a child, the time on childcare leave will be recognized as a period of employment provided the employee is reemployed with the former employing activity within 3 years after the date of childbirth and has not accepted other interim employment with another employer.

F-3. Periods of military service with the German Armed Forces (*Bundeswehr*) or a substitute service (*Ersatzdienst*) will be recognized as creditable service.

a. If an employee, while employed with the U.S. Forces, is called to basic military service, to a substitute service, to a military exercise, or to voluntary extended military service of not more than 4 months, the employment will be suspended during the employee's absence. In case of military exercises based on voluntary commitment, this applies only if the exercise itself, or in addition to other voluntary military exercises, does not exceed 6 weeks within 1 calendar year.

b. The provisions in subparagraph a above apply if an individual who is obligated to serve basic military service performs voluntary extended military service for either of the following:

(1) The service period initially scheduled to last 6 months (probationary period).

(2) If actually served, the service period finally scheduled to last not more than 2 years.

c. The employee will be required to submit the order to report to military service to the employing organization without delay.

d. Employees who resume their employment after an absence as indicated in subparagraphs a and b above must not experience disadvantages in their employment because of the absence. To qualify for this protection, an employee is generally required to report for duty on the first workday after discharge from military service or completion of a military exercise or extended military service and submit a certificate of military service or another pertinent certificate without delay. The circumstances involved in delayed reporting for duty will be reviewed and will not affect the employee's rights, provided the delay is not the fault of the employee and the employee has not meanwhile engaged in other employment.

e. An individual appointed after completing basic military service, voluntary extended military service, substitute service, or a military exercise will receive credit, as outlined below, in terms of length of service and occupational incumbency after 6 months of employment. The term *after*, as a rule, means immediately on completion of the pertinent service or exercise. The time between the discharge and appointment with the U.S. Forces, however, may extend to several months, provided the employee was not permanently employed between the discharge and appointment and provided a reasonable explanation for the delay exists. In addition, the appointment must constitute the employee's first permanent employment on completion of the pertinent service.

(1) Basic military service, substitute service, and participation in military exercises will be fully credited.

(2) Voluntary extended military service of up to 2 years (*Soldat auf Zeit*) will be credited as indicated in subparagraph b above.

f. Full credit will be given to an employee who has undergone training useful in the employee's future occupation after a period under subparagraphs a and b above, and is appointed after the training. The provisions of subparagraph e above apply similarly. The training must be in addition to general school education and must have been completed without unduly exceeding the standard timeframe of the training.

g. For Soldiers with voluntary extended military service scheduled in excess of 2 years who, after discharge from the military service or after premature discharge from the military service because of incapacitation, are appointed or reappointed, the following applies:

(1) Basic military service performed (also when performed on a voluntary basis) or the time of military service creditable as basic military service in accordance with section 7, paragraph 1, Law on Compulsory Military Service (*Wehrpflichtgesetz*), will be credited in full. Periods of military service exceeding the time of basic military service will be credited to one-third of the time, except for periods in (2) below.

(2) Periods of technical training (*Fachausbildung*) during military service will be fully credited if the appointment is made to a position of the same or related occupation.

(3) Periods of technical training after military service will be fully credited if costs of the training are paid by the German Government and the appointment is made to a position of the same or related occupation.

(4) Full credit will also be given for periods of training useful to the employee's future occupation after technical training or military service without unduly exceeding the standard timeframe of the training.

h. Credit will not be given for occupational training other than the technical training in g(3) above, university attendance, or technical university education of several years after completing military service, since there is no timely connection between such training or education and military service.

i. The provisions on credit for basic military service under subparagraphs a through g above will also apply to employees who are nationals of European Union countries and who have been called to serve compulsory military duty in their home country.

j. The provisions on credit for basic military service under subparagraphs a through g above will also apply similarly for the reduced military service (2 months) of Turkish nationals.

k. LN employees who have served with the U.S. Forces and have been *discharged under honorable conditions* will have this service credited in the same manner as had they served with the German Armed Forces (*Bundeswehr*).

APPENDIX G

SAMPLE RECONCILIATION OF INTERESTS FOR A NOTICE OF TERMINATION FOR CHANGE OF EMPLOYMENT CONDITIONS

The position of Mr. XYZ has been eliminated because of the closure of the printing production plant of the Document Automation and Production Service, Europe (DAPSEUR). He is the only employee within his qualification level. Within the total competitive area, no other employee performs comparable duties. Therefore, displacing an employee with lower social-retention standing is not possible.

As an election candidate, Mr. XYZ has continuing protection from termination of employment in accordance with section 15, paragraph 3, Law on Protection From Termination of Employment (*Kündigungsschutzgesetz (KSchG)*). Because the part of the agency where Mr. XYZ was employed has been closed, section 15, paragraphs 4 and 5, Law on Protection From Termination of Employment (*KSchG*), apply in his case.

Placement in the remaining part of the agency is not possible because there are no available vacancies.

As a next step, the possibility of placing Mr. XYZ in a vacancy within the commuting area had to be reviewed. In relation to this, his vocational training as well as his professional career had to be considered. In addition, his qualifications had to be determined and compared to the qualification requirements of available vacancies. Finally, it had to be determined whether or not he was entitled to priority placement into a vacancy for which he met qualification requirements based on his social-retention standing, or whether other employees had higher social-retention standings.

Mr. XYZ has a high school education of *Realschule* level and completed vocational training as an offset printing technician. He was assigned to education level IV.

The employee's professional career with the U.S. Forces is as follows:

From	Until	Employed as
November 1976	March 1984	Offset Printing Technician, G-7
April 1984	March 1988	Printing Officer, C-5A
April 1988	March 1989	Printing Officer, C-6
April 1989	March 1990	Printing Officer, C-6A
April 1990	December 1993	Printing Officer, C-7
January 1994	present	Production Controller, C-6A

Mr. XYZ did not submit the questionnaire for the collection of social data, which also includes questions regarding additional qualifications. His knowledge and skills were therefore determined based on his personnel file. As far as his English language skills are concerned, level II (intermediate skills) was selected, since it was assumed that an employee who worked in a responsible position for years had to have more than beginner skills.

At present, the following U.S. Forces vacancies are available within the employee's commuting area:

No.	Position Title	Grade	Location
1	Supply Technician (office automation)	C1-2005-05	Gießen
2	Supply Technician (office automation)	C1-2005-05	Groß-Auheim
3	Supply Technician (office automation)	C1-2005-04	Groß-Auheim
4	Supply Technician	C1-2005-4A	Groß-Auheim
5	Mail Clerk	C1-0305-03	Wiesbaden
6	Laborer	A1-3502-02	Wiesbaden
7	Supply Technician	C1-2005-4A	Wiesbaden
8	Work Order Clerk	C1-0303-4A	Wiesbaden
9	Management Assistant	C1-0344-05	Hanau
10	Budget Assistant	C1-0561-05	Hanau
11	Operations Assistant	C1-0303-05	Wiesbaden
12	Supply and Procurement Technician (office automation)	C1-2005-5A	Frankfurt

Mr. XYZ currently receives compensation in accordance with the end step of salary grade C-6A. In accordance with section 4, paragraph 4a, of the Protection Agreement, a reasonable offer for continued employment is an offer for a position with a rate per schedule that does not fall below the employee's previous rate per schedule by more than 20 percent. Therefore, the positions of salary group C-5 and above are considered reasonable for Mr. XYZ.

Consequently, Mr. XYZ could be considered for position no. 1. The incumbent of this position, however, must be fluent in spoken and written English. Since Mr. XYZ does not meet this requirement, he could not be placed in this position.

Mr. XYZ may also be suitable for position no. 2, because an employee of qualification level IV is qualified for this position without having to meet other requirements. However, this position also requires the incumbent to be fluent in spoken and written English. Since Mr. XYZ does not meet this requirement, he could not be considered for this position.

An employee of qualification level IV is generally qualified for position no. 9. In addition, the incumbent of this position must be fluent in spoken and written English and have a good knowledge of Microsoft Office. Since Mr. XYZ does not meet these requirements, he could not be considered for this position.

An employee of qualification level IV is generally qualified for position no. 10. In his previous job as production controller, Mr. XYZ performed similar duties. He also meets the requirement for intermediate English language skills and was therefore considered for this position.

An employee of qualification level IV is fully qualified for position no. 11. However, this position also requires computer skills that Mr. XYZ, according to his own information, does not have. Therefore, he could not be considered for this position.

An employee of qualification level IV is qualified for position no. 12. This position also requires computer skills that Mr. XYZ, according to his own information, does not have. In addition, this position had to be offered to an employee with a higher social-retention standing (Mr. ABC, 94 retention-credit points).

Vacancies available in the Army and Air Force Exchange Service, Europe (AAFES-Eur), cannot be considered for Mr. XYZ, because either they cannot be considered reasonable offers or the incumbent must be fluent in spoken and written English.

According to a current vacancy list, there are at present no suitable Air Force vacancies within the commuting area of DAPSEUR employees.

Since no other suitable vacancies are available, all facts and circumstances were considered, and the only possibility was to offer Mr. XYZ position no. 10 (Budget Assistant, C-0561-5, in Hanau) through a notice of termination for change of employment conditions, because he did not agree to a reassignment to that position by mutual consent.

Because of his work in a printing plant, a 35-hour workweek was applicable to Mr. XYZ as established in the tariff agreement. Therefore, the basic compensation for the position in which he will be placed with workhours of 38.5 per week had to be converted for computation of the pay protection supplement. As a result, Mr. XYZ is entitled to a personal supplement of €283.34. In addition, he will receive a pay protection supplement of €544.09 for 12 months.

To set off these supplements against potential increases in basic compensation, the corresponding provisions of sections 5 and 8 of the Protection Agreement apply.

GLOSSARY

SECTION I ABBREVIATIONS

AAFES-Eur	Army and Air Force Exchange Service, Europe
CG, USAREUR/7A	Commanding General, United States Army, Europe, and Seventh Army
CHRA-E	United States Army Civilian Human Resources Agency, Europe Region
CPAC	civilian personnel advisory center
CPOC	Civilian Personnel Operations Center
CTA II	Collective Tariff Agreement II
DAPSEUR	Document Automation and Production Service, Europe
DWC	district works council
GPRL	Federal Personnel Representation Law
HQ USAREUR/7A	Headquarters, United States Army, Europe, and Seventh Army
HRO	human resources office
HWC	head works council
LN	local national
LNRS	Local National Referral System
no.	number
RIF	reduction in force
RPA	request for personnel action
SA NATO SOFA	Supplementary Agreement to the North Atlantic Treaty Organization Status of Forces Agreement
SHE	severely handicapped employee
SSA	Social Security Agreement of Employees of the Sending State Forces in the Federal Republic of Germany (Social Security Agreement)
TDA	table of distribution and allowances
TDY	temporary duty
U.S.	United States
USAFE	United States Air Forces in Europe
USAREUR	United States Army, Europe
USEUCOM	United States European Command

SECTION II TERMS

agency

All employing organizations represented by one works council.

agency chief

The person in charge of an agency that is represented by one works council.

competitive area

An area that includes an entire agency. The competitive area also includes annexes (*Nebenstellen*) located outside the commuting area of the main agency if employees of annexes are represented by the works council of the main agency.

employee with assimilated status

An employee whose handicap diminishes his or her capability for gainful employment to a degree of less than 50 percent but at least 30 percent, whose handicap is not temporary, and who is therefore granted equal status of severely handicapped persons with regard to protection from termination of employment.

merger

A condition that exists when a competitive area, part of a competitive area, several different competitive areas, or a function is consolidated with another competitive area inside or outside the commuting area.

qualification level

A term used to indicate all positions for which an employee is interchangeable. When determining professional and job experience according to this guidelines, only special or specific experience acquired within the past 5 years may be recognized.

reduction in force

An organizational measure that results in the termination or reassignment of local national employees.

severely handicapped employee

An employee who, because of his or her abnormal physical, mental, or emotional condition, is physically or mentally handicapped to a degree that decreases his or her capability for gainful employment by no less than 50 percent and whose handicap degree is not only temporary.

Social Security Agreement

An agreement that provides social security to employees of the U.S. Forces who receive a notice of termination in connection with a reduction in force. This agreement is administered by representatives of Germany. It provides employees priority placement opportunities in the German public service, as well as support payments in certain situations.

transfer of function

An action that occurs when the performance of an existing function is removed from one competitive area and added to one or more other competitive areas, or when the entire competitive area is transferred with the function to a location inside or outside the commuting area.